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December 31, 1998

Dear Ms. Xxxxx:

This letter is in response to your letter dated September 10, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

INTSITUTE is considering organising a conference in Chicago next year, but would first like to find out what its tax liabilities might be.

1. The Institute is a professional body registered in the COUNTRY as a charity.
2. Can we register as exempt from local, Federal and any other taxes since we are a COUNTRY registered charity? If we were exempted, would there be any other taxes that we would still be liable for?
3. The conference will take place at the PLACE and hopefully will be attended by about 300 international delegates.
4. These delegates will be paying for registration (including coffee, tea and lunches), tours, banquets, receptions into this office in the COUNTRY.
5. Delegates will receive handbooks containing abstracts and other information which will have been printed either in COUNTRY or USA. Does it matter which country the printing is done in?
6. Booking forms and other publicity material will be printed in the COUNTRY.
7. The organisers are mainly COUNTRY citizens, although one or two people in USA will be paid fees.
8. Speakers will not be paid a fee, their registration will be *gratis*.

9. We may ship some publications out to Chicago to sell to delegates.
10. The venue and catering will be provided by the INSTITUTE, who we will then pay.
11. We will be purchasing tours, receptions and banquets for the delegates.
12. Can we hold bank accounts in fsterling and US dollars?
13. Would we be deemed to be conducting business in Illinois or COUNTRY? And for which items listed above?
14. Is there a local or Federal profits tax for business conducted in Illinois or Chicago?
15. Is there a local or Federal turnover tax for business conducted in Illinois or Chicago?

The Trustees are meeting early next week to discuss this matter, would it be possible to have prompt reply to these many questions?

Thank you for your time and co-operation.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1996 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition).

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable receive an exemption identification number ("E" number). See 86 Ill. Adm. Code 130.2007, enclosed. This number exempts such organizations from Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. It also allows them to engage in a very limited amount of selling without incurring Retailers' Occupation Tax. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005.

However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must register with the Department as retailers. They would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, enclosed, which describes the requirements for validly executed Certificates of Resale.

An Illinois retailer is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois retailer is liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by purchasers.

The definition of a "retailer maintaining a place of business in Illinois" is set forth at 86 Ill. Adm. Code 150.201(i), see enclosed. An out-of-State retailer maintaining a place of business in this State is required to register with the State as an Illinois Use Tax collector. See the enclosed copy of 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of its Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The final type of retailer is simply the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax law. A retailer in this situation does not incur Retailer' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's sales tax laws. The Supreme Court has set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due Process will be satisfied if the person or entity purposely avails himself or itself of the benefits of an economic market in a forum state. *Id.* at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause.

A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary.

In general, seminar, training session, conference, or continuing education providers incur Retailers' Occupation Tax on the gross receipts from sales in Illinois of seminar, training, conference, or continuing education manuals such as workbooks, reference books, and outlines. The sales of these items are subject to Retailers' Occupation Tax whether the items are sold separately or as part of the total tuition charge for the seminars. If the books and outlines are sold as part of the total tuition charge, the providers must allocate the amount for the selling price of the books and charge tax on that amount.

When a company contracts for the production of custom printed literature, a special order printing situation exists and liability is incurred under the Service Occupation Tax Act. See 86 Ill. Adm. Code 130.2000 and 140.101, enclosed.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on

the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

For your information, please find enclosed a copy of 86 Ill. Adm. Code 480.101, which explains the nature, rate, and scope of the Hotel Operators' Occupation Tax Act. As you can see from Section 480.101(b)(3), a hotel operator incurs this tax on room rentals to entities that would otherwise be exempt from sales taxes (i.e., entities such as exclusively charitable, religious, or educational groups or government entities that possess exemption identification numbers).

It is important to note in connection with this tax that this is a tax imposed upon hotel operators and not hotel guests. The Hotel Operators' Occupation Tax Act allows hotel operators to collect an amount from their customers that represents reimbursement for the hotel operators' tax liability. As a result, there is no tax that is imposed upon guests from which they can be

exempted. The fact that these guests hold exemption identification numbers issued by the Department does not exempt them from reimbursement.

The only exemptions available to hotel operators are for rentals to permanent residents and to certain diplomatic personnel. The exemption for rentals to certain diplomatic personnel applies only to diplomatic personnel possessing certain types of diplomatic tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions. See the enclosed copy of 86 Ill. Adm. Code Ch. I, Sec. 130 Illustration A.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.